



AF / 62155 ✓

IPW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WARREN E. LANGDON

Group Art Unit: 2155

Serial No.: 09/672,398

Examiner: D. Lazaro

Filed: September 28, 2000

2 For: PORTABLE WIRELESS PLAYER AND ASSOCIATED METHOD

Attorney Docket No.: 1724 / USW 0605 PUS

### APPEAL BRIEF

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an appeal brief from the final rejection of claims 1-20 of the Office Action dated February 23, 2004. This application was filed on September 28, 2000.

### I. REAL PARTY IN INTEREST

The real party in interest is Qwest Communications International, Inc., a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 1801 California Street, Denver, Colorado 80202, as set forth in the assignment recorded in the U.S. Patent and Trademark Office on September 28, 2000 Reel011163/Frame 0257.

#### CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

July 23, 2004  
Date of Deposit

Jeremy J. Curcuri  
Name of Person Signing

  
Signature

## **II. RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## **III. STATUS OF CLAIMS**

Claims 1-20 are pending in this application. Claims 1-20 have been rejected and are the subject of this appeal.

## **IV. STATUS OF AMENDMENTS**

No amendment after final rejection has been filed.

## **V. SUMMARY OF THE INVENTION**

The invention relates to a method of providing programming to a portable wireless player. (Page 1, lines 3-4.)

Although many existing wireless devices including cellular phones and personal digital assistants have been commercially successful, many of these devices have many advanced features and the consumer is forced to pay a premium for the product, even though many of the features may go unused. The invention provides a portable wireless player and associated method of providing programming to a portable wireless player that provides the functionality demanded by a consumer while providing enough simplicity to keep the product cost low. (Page 1, lines 14-21.)

The invention comprehends a method of providing programming to a portable wireless music player. The invention is exemplified by the preferred embodiment illustrated in Figures 1-4. As best shown in Figure 1, a portable wireless music player 32, 34 has a memory and is operative to transmit and receive information over a wireless link to a wireless service network 24. As shown, base station 26 connects a number of transmitters 28, 30 to communicate with portable wireless music players 32 and 34. The portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time-critical in its operations. The wireless service network 24 is in communication with a music service provider 12. Music service provider 12 allows connections from remote clients.

As shown, music provider 12 is connected to a database 14 storing the play lists for the various users of the portable wireless music players. To define the information in the play list, for a particular user, the user connects to the music service provider 12 from a remote client. As shown, the user connects from a computer 20 through an Internet service provider 18, over the Internet 16, to music service provider 12. Of course, alternatively, the user may access wireless service provider 12 in a different manner or over a different network 22. (Page 5, line 21 through page 7, line 15.)

According to the invention, as exemplified in Figure 4, the remote client 20 connects to the music service provider 12. Through user interaction at the remote client 20, a play list is defined at the music service provider 12. The portable wireless music player 32, 34 connects to the music service provider 12 over the wireless service network 24.

According to the invention, music is downloaded to the portable wireless music player 32, 34 from the music service provider 12 in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time-critical in its operations. The music is played at the player. (Page 2, lines 1-12; page 4, line 13 through page 5, line 6; page 10, lines 12-22.)

The invention also involves a number of other more detailed aspects relating to network implementation and configuration. More specifically, a suitable wireless service network is a packet network such as a virtual local area network (VLAN). The last leg of the network is preferably implemented as an Internet protocol (IP) network to allow the use of dynamic host configuration protocol (DHCP). Quality of service rating may also be employed. (Page 2, line 13 through page 3, line 2; page 7, lines 4-28.)

The invention comprehends methods for providing programming to portable wireless players wherein a portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time-critical in its operations, as well as portable wireless players themselves. The claims particularly point out that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time-critical in its operations. This aspect of the invention is described in the specification, for example, at page 4, line 16 through page 5, line 6. Particularly worth noting is the fact that with the portable wireless music player comprehended by the invention, there is no need for an expensive personal computer, personal digital assistant, or cellular phone, but instead, a simple portable listening device may be utilized.

## **VI. ISSUES**

1. Whether claims 1-5, 15-16 and 20 are anticipated by Eyal (U.S. Patent No. 6,389,467).
2. Whether claims 6 and 17 are unpatentable over Eyal in view of La Porta et al. (U.S. Patent No. 6,434,134).
3. Whether claims 7-8 and 18-19 are unpatentable over Eyal in view of La Porta, further in view of Hulyalkar (U.S. Patent No. 5,787,080).

4. Whether claims 9-13 are unpatentable over Eyal in view of Hulyalkar.
5. Whether claim 14 is unpatentable over Eyal in view of Hulyalkar, further in view of La Porta.

#### **VII. GROUPING OF CLAIMS**

1. With regard to Eyal, claims 1-5, 15-16 and 20 stand or fall together.
2. With regard to Eyal in view of La Porta, claims 6 and 17 stand or fall together.
3. With regard to Eyal in view of La Porta, further in view of Hulyalkar, claims 7-8 and 18-19 stand or fall together.
4. With regard to Eyal in view of Hulyalkar, claims 9-13 stand or fall together.
5. With regard to Eyal in view of Hulyalkar, further in view of La Porta, claim 14 has been rejected individually.

#### **VIII. ARGUMENT**

With regard to the ground of rejection for claims 1-5, 15-16 and 20, the claims particularly point out that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations. This aspect of the invention is described in the specification, for example, at page 4, line 16, through page 5, line 6. Particularly worth noting is the fact that with the portable wireless music player comprehended by the invention, there is no need for an expensive personal

computer, personal digital assistant or cellular phone, but instead, a simple portable listening device may be utilized. This is in direct contrast to the relied upon reference, Eyal, which describes Internet-enabled computing platform 210 as, for example, a PC, PDA, cellular phone, or Palm PC.

Applicant's invention contemplates an arrangement where a play list is defined at the music service provider through user interaction at a remote client. Subsequently, music is downloaded to the portable wireless music player from the music service provider in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations. This is in contrast to Eyal wherein the Internet-enabled computing platform interfaces with a server module to achieve searching and the playing of media from play lists.

With regard to representative claim 1, claim 1 recites a method of providing programming to a portable wireless music player having a memory and being operative to transmit and receive information over a wireless link to a wireless service network. *The portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations.* The wireless service network is in communication with a music service provider. The music service provider allows connections from remote clients. The method comprises connecting to the music service provider from a remote client. The method further comprises defining a play list at the music service provider through user interaction at the remote client. The method further comprises connecting to the music service provider with the portable wireless music player over the wireless service network. *The music is downloaded to the portable wireless music player from the music service provider in accordance only with the previously defined play list.* The method further comprises playing the music at the portable wireless music player.

It is appreciated that music is downloaded in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations. In contrast, Eyal describes Internet-enabled computing platforms that are far different than the recited relatively simple listening devices with limited functionality required by claim 1. For example, both the title and abstract of Eyal refer to search functionality at the network-enabled devices. In Eyal, the network-enabled devices are generally used for streaming media search and playback, and Eyal also offers a detailed discussion of data management. Further, there is no suggestion to modify these devices in Eyal, which are exemplified as a PC, PDA, cell phone or Palm PC, to achieve applicant's invention. For these reasons, Eyal fails to anticipate claim 1.

In the final Action, the Examiner provided further comments with regard to Eyal. In paragraph 33, the Examiner references column 32, lines 17-19. Eyal is describing play list access from any one of a plurality of terminals that have access to the system. See lines 18-19.

The Examiner also references column 10, lines 48-65. This describes, in contrast to the invention, Internet-enabled computing platforms that are far different than the recited relatively simple listening devices with limited functionality required by claim 1. The devices in Eyal are exemplified as a PC, PDA, cell phone, or Palm PC, which are far different than the claimed portable wireless music player.

The Examiner also references column 33, lines 51-64. This describes an example in Eyal that uses wireless access protocol (WAP) enabled devices. Eyal exemplifies the WAP enabled device as a handheld computer or cell phone. Again, this is consistent with Eyal's overall approach, using enhanced devices as listening devices, that is far different than the claimed invention.

After referencing these three locations in Eyal, the Examiner goes on to conclude that the minimum scope disclosed by Eyal for a device to access a predefined play list and playback the music of that play list would have limited functionality so as not to be time-critical in its operations. This conclusion reached by the Examiner is not supported. As explained by Applicant, Eyal uses a far different approach than the claimed invention. In Eyal, the network-enabled devices are generally used for streaming media search and playback – as opposed to only for use with a previously defined play list – and Eyal also offers a detailed discussion of data management. Further, there is no suggestion to modify the devices in Eyal, which are exemplified as a PC, PDA, cell phone, or palm PC. In this way, it cannot be logically concluded from Eyal that there is a suggestion for a music player that is only a relatively simple listening device with limited functionality so as not to be time-critical in its operations in the combination as claimed. In contrast, Applicant contends that the minimum scope disclosed by Eyal for a device to access the play list is a more complicated Internet-enabled computing platform (210) such as, for example, a PC, PDA, cellular phone, or palm PC to allow for Eyal's streaming media search and playback.

In paragraph 34 of the final Action, the Examiner makes further comments with regard to Eyal. Nevertheless, these comments fail to address the deficiency noted above.

In paragraph 35 of the final action, the Examiner makes further comments with regard to Eyal. Nevertheless, these further comments fail to address the deficiency of Eyal noted above. The Examiner again attempts to read Eyal on the claims and states that Eyal “implies that other devices, such as those with limited functionality so as not to be time-critical in their operations, can be used to access predefined play lists as long as they can access the network.” As explained above, Eyal does not imply or suggest the use of relatively simple listening devices with limited functionality so as not to be time-critical in operation in the specific combination to achieve the claimed invention.



Continuing in paragraph 35 of the final Action, the Examiner goes on to state that "There are many such devices that are simple listening devices with limited functionality that *could be adapted* to use the system of Eyal to access predefined play lists, such as Samsung's Internet music player." Emphasis added. Eyal fails to anticipate the claimed invention. There is no motivation to modify Eyal to achieve the claimed invention. The Examiner has not provided a teaching of such motivation, and has only made reference to the general concept of an MP3 player and an unsupported statement regarding adaption.

For all of these reasons, the group including claims 1-5, 15-16 and 20 are believed to be patentable.

With regard to the group including claims 6 and 17, these claims are dependent claims and are also believed to be patentable.

With regard to the group including claims 7-8 and 18-19, these claims are dependent claims and are also believed to be patentable.

With regard to the group including claims 9-13, claim 9 is an independent claim and is believed to be patentable for the reasons given above, and claims 10-13 are dependent claims and are also believed to be patentable.

With regard to claim 14, claim 14 is a dependent claim and is also believed to be patentable.

The fee of \$330.00 as applicable under the provisions of 37 C.F.R. § 1.17(c) is enclosed. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

**WARREN E. LANGDON**

By: 

Jeremy J. Curcuri  
Registration No. 42,454  
Attorney for Applicant

Date: July 23, 2004

**BROOKS KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075-1238  
Phone: 248-358-4400  
Fax: 248-358-3351

Enclosure - Appendix



**IX. APPENDIX - CLAIMS ON APPEAL**

1. A method of providing programming to a portable wireless music player having a memory and being operative to transmit and receive information over a wireless link to a wireless service network, the portable wireless music player being only a relatively simple listening device with limited functionality so as not to be time critical in its operations, the wireless service network being in communication with a music service provider wherein the music service provider allows connections from remote clients, the method comprising:

connecting to the music service provider from a remote client;

defining a play list at the music service provider through user interaction at the remote client;

connecting to the music service provider with the portable wireless music player over the wireless service network;

downloading music to the portable wireless music player from the music service provider in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations; and

playing the music at the player.

2. The method of claim 1 wherein the music service provider is connected to the Internet, and wherein connecting to the music service provider from the remote client further comprises connecting over the Internet.

3. The method of claim 1 wherein the wireless service network includes a packet network.

4. The method of claim 1 wherein the wireless service network includes a virtual local area network.

5. The method of claim 1 wherein the wireless service network includes a last leg, and wherein the last leg is in accordance with Internet protocol.

6. The method of claim 5 wherein the last leg is in accordance with dynamic host configuration protocol.

7. The method of claim 6 wherein the connection between the music service provider and the portable wireless music player, including a portion of the connection over the last leg includes a quality of service rating.

8. The method of claim 7 wherein the wireless service network is for providing a plurality of services in addition to connections to the music service provider, wherein the plurality of services have different quality of service ratings.

9. A method of providing programming to a portable wireless player having a memory and being operative to transmit and receive information over a wireless link to a wireless service network, the portable wireless music player being only a relatively simple listening device with limited functionality so as not to be time critical in its operations, the wireless service network being in communication with a service provider wherein the service provider allows connections from remote clients, the method comprising:

connecting to the service provider from a remote client;

defining a play list at the service provider through user interaction at the remote client;

connecting to the service provider with the portable wireless music player over the wireless service network, the connection between the service provider and the portable wireless music player including a quality of service rating wherein the wireless service network provides a plurality of services in addition to connections to the service provider, and wherein the plurality of services have different quality of service ratings;

downloading programming to the portable wireless music player from the service provider in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations; and

playing the programming at the portable wireless music player.

10. The method of claim 9 wherein the service provider is connected to the Internet, and wherein connecting to the service provider from the remote client further comprises connecting over the Internet.

11. The method of claim 9 wherein the wireless service network includes a packet network.

12. The method of claim 9 wherein the wireless service network includes a virtual local area network.

13. The method of claim 9 wherein the wireless service network includes a last leg, and wherein the last leg is in accordance with Internet protocol.

14. The method of claim 13 wherein the last leg is in accordance with dynamic host configuration protocol.

15. A portable wireless player for use in playing programming received over a wireless link to a wireless service network, the wireless service network being in communication with a service provider that allows connections from remote clients wherein a remote client connects to the service provider and defines a play list at the service provider through user interaction at the remote client, the portable wireless player comprising:

a housing;

a processor disposed in the housing;

a memory disposed in the housing;  
a transmitter for transmitting information over the wireless service network;  
a receiver for receiving information over the wireless service network; and  
instructions in the memory that direct the processor to connect to the service provider over the wireless service network, to download programming to the portable wireless music player in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations, and to play the programming.

16. The player of claim 15 wherein the wireless service network includes a last leg in accordance with Internet protocol, and wherein the instructions further comprise: instructions in the memory for connecting to the wireless service network in accordance with Internet protocol.

17. The player of claim 16 wherein the instructions further comprise: instructions in the memory for connecting to the wireless service network in accordance with dynamic host configuration protocol.

18. The player of claim 17 wherein the connection between the music service provider and the player, including a portion of the connection over the last leg includes a quality of service rating.

19. The player of claim 18 wherein the wireless service network is for providing a plurality of services in addition to connections to the music service provider, wherein the plurality of services have different quality of service ratings.

20. A portable wireless music player for use in playing music received over a wireless link to a wireless service network, the wireless service network being in communication with a music service provider that allows connections from remote clients

wherein a remote client connects to the music service provider and defines a play list at the music service provider through user interaction at the remote client, the portable wireless player comprising:

- a housing;
- a processor disposed in the housing;
- a memory disposed in the housing;
- a transmitter for transmitting information over the wireless service network;
- a receiver for receiving information over the wireless service network;
- instructions in the memory that direct the processor to connect to the music

service provider over the wireless service network, to download music to the portable wireless music player in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations, and to play the music;

- a display for displaying the play list; and

- a plurality of control buttons for selecting music to play from the play list on

the display.